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No. 85-766

# In The
# Supreme Court Of The United States

OCTOBER TERM, 1985

**JULIA H. TASHJIAN,**
**Secretary of the State of Connecticut,**
*Appellant,*

v.

**REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR., STEWART B. McKINNEY, NANCY L. JOHNSON AND THOMAS J. D'AMORE, JR.,**
*Appellees.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## APPELLANT'S REPLY BRIEF

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Appellees.

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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# APPELLANT'S REPLY BRIEF

## INTRODUCTION AND SUMMARY

The sole issue in this case is the right of the States to regulate voter qualifications in a state primary election. Appellees at first argue that the States have no such right, claiming that a major party may " 'determine its own membership by any standard it pleases.' " Br., p. 17. [1/]

Appellees then concede, however, that the States may regulate primary voter eligibility and may at least require enrollment on primary day. Br., p. 36. They also acknowledge that the States may expand voter participation beyond that permitted by a party, contending that a state-mandated closed primary is unconstitutional, while a state-mandated open primary is not. Br., pp. 38-39.

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1/ Abbreviations refer to the following: Br., Appellees' brief; Appellant's br., our brief on the merits previously filed; J.S. App., Appendix to Jurisdictional Statement; J.A., Joint Appendix; Add., addendum to this brief.

These inconsistencies reflect the basic fallacies of their argument. Appellees' contrived distinctions, furthermore, reflect a fundamental misunderstanding of the Constitutionally ordained role of the States, as well as Congress, in election regulation. Each State may select the primary system which in its judgment best serves a free and representative government. That judgment, while not absolute, is entitled to respect under the Constitution.

Connecticut, furthermore, has very liberal party affiliation requirements. One may vote in a primary simply by joining a party up to the day before the election. No loyalty oath or fee is required and one may disaffiliate at any time. This is in marked contrast to the serious administrative burden on election officials caused by the conflicting voter qualifications of appellees' "rule".

This is not a case involving unfair, oppressive or discriminatory election burdens. This case concerns a

demand by a political party to rewrite the election laws as it absolutely pleases. If this Court adopts this logic, then the federal judiciary will be mired down with suits based on endless jockeying for narrow partisan advantage. Federal judges will become election commissioners. Moreover, the States and the public will lose their ability to select an election system which they believe best promotes democratic and governmental goals.

This brief will discuss the States' interests in party responsibility and avoiding voter confusion; the serious administrative burden imposed by plaintiffs' rule; the lack of any evidence that the statute has harmed them; the role of the States in election administration and the requirement for equal voting qualifications under Art. I; and the significant admissions as to the States' interests now made by plaintiffs.

## I. PLAINTIFFS FAIL TO DEAL WITH THE INTERESTS OF THE STATE.

### A. Plaintiffs Totally Ignore Party Responsibility And The Importance Of Avoiding Voter Confusion.

As this Court recognized in Democratic Party v. Wisconsin, 450 U.S. 107, 124 n.28 (1981), "[o]bviously, States have important interests in regulating primary elections [citation omitted]." The Court considered these interests substantial, id. at 127, stating: " 'Neither the right to associate nor the right to participate in political activities is absolute.' " Id. at 124. Furthermore, Justices Powell, Blackmun and Rehnquist stated in their dissent:

> These [major political] parties play a central role in the electoral process in this country, to a degree that has led this Court on occasion to impose constitutional limitations on party activities. [citations omitted.] Arguably, the special status of the major parties is an additional factor favoring state regulation of the electoral process even in the face of a claim by such party that this regulation has interfered with its First Amendment rights.

Id. at 134 n. 9.

The dissent cited with aproval the prior case upholding the same Connecticut law involved here, Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), aff'd mem., 429 U.S. 989 (1976).

Democratic Party involved a state law and a national party. "Congressional regulations of national conventions or state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly diferent balance." Cousins v. Wigoda, 419 U.S. 477, 497 n. (1975) (Powell, J., concurring in part and dissenting in part).

Plaintiffs have not dealt with the chief interests of the State and have also misstated them, going so far as to suggest that the State is "requiring a political party to maintain a preexisting ideology or constituency." Br., pp. 9, 28.

To the contrary, the State law recognizes that a major political party serves an important function of free government. The parties are a link between the voters and their leaders. It is therefore essential to preserve the parties' responsibility to the public. Appellant's br., pp. 28-35.

As Edmund Burke stated, " '[p]arty divisions whether on the whole operating for good or evil, are things inseparable from free government.' " H. Mansfield, Statesmanship and Party Government, A Study of Burke and Bolingbroke 3 (1965). For this reason, party responsibility has always been vital to representative government. "Party responsibility means that party leaders should follow the rules laid down by the sovereign electorate." Id. at 153. A viable political party is a method of control by the people on their government. Id. at 192. 2/

Appellees in advocating an "open" primary lose sight of the fact that the issue is not which system may be best. The question is whether the State will continue to be "free to structure its political system to meet its 'special concerns and political circumstances,' "

---

2/ For example, Jefferson believed that a majority of the people could direct their rulers through the Republican party program and thus challenge the Federalist administration. Id. at 196.

Rodriquez v. Popular Democratic Party, 457 U.S. 1, 13-14 (1982), and to choose "the primary scheme that it thinks will best promote democratic, electoral and governmental goals." Nader v. Schaffer, 417 F.Sup. 837, 843 (D.Conn. 1976), aff'd mem., 429 U.S. 989 (1976). There is substantial evidence that the Connecticut law preserves party responsibility and prevents confusing party nominations from independent ones. See Appellant's br., pp. 27-41. Even the Court of Appeals acknowledged: "The further one moves down the ballot, the more difficult it is for voters to make selections without relying on the party label." J.S. App. 117-18 n.27.

A Connecticut legislator who is also a political science professor (Rep. Cibes) referred to the "great deal of comparative political research" which indicated that open primary states "have less responsive public policy decisions being made...." Appellant's brief, L.Add. 18a. A study of nominating systems based in part on Connecticut's found that there was a "close relation

among the legal rules that govern nominations, who influences nominations, and who eventually governs--the relation between process and substance." Keynes, Tobin and Danziger, Institutional Effects On Elite Recruitment, The Case of State Nominating Systems, 7 Am. Pol. Q. 283, 298 (1979).

> [L]egal rules that narrow the scope of conflict to a party's activists or registered voters can contribute to "responsible party government," as contemplated by E.E. Schattschneider (1942).

Id. at 296 (emphasis added).

* *

> From the perspective of liberal-democratic theory, the transfer of effective decision-making from party organizations to interest groups has several important consequences. First, interest-group elites are primarily responsible to their organizational constituencies rather than to broad electorates.

Id. at 297.

* * *

> Thus, increasing access of interest groups to and reducing control of political parties over nominations can actually substitute the influence of less visible and less accountable private elites for the influence of more visible and, theoretically, more accountable party elites.

Id. at 298. (emphasis added).

Connecticut, furthermore, has never sought to control the party's ideology or constituency, and to suggest that it has only serves to mask the real issues.

The question is not whether the closed primary is best for all states. Connecticut has decided that it is best for it, for reasons that are more than legitimate. The issue is whether a State will still be able to have a political system that will meet its special concerns and best promote its democratic and governmental goals, or whether that discretion will now be wrenched from it. Our state believes it important that the nomination bearing a major party label is in fact that of the party and not some other, anonymous group. For Connecticut, public accountability of a major party is impaired when the party's nominations are actually determined by those foreign to it. When accountability is lost, it is the public--not simply the party--which loses. As Woodrow Wilson stated: "This thing [the political party] that has

served us so well might now master us if we left it irresponsible. We must see to it that it is made responsible." W. Wilson, Constitutional Government In the United States, 220 (1908). Connecticut's judgment need not be imposed on other states. It is, however, entitled to understanding and respect under the Constitution.

B. Plaintiffs' Claim That Their Rule Does Not Interfere With Orderly Election Administration Completely Disregards The Facts.

As stated in our brief on the merits, pp. 74-78, plaintiffs' rule would lead to disorder and confusion because different voting qualifications, applying unevenly and irregularly to different parties and to different offices, would have to be enforced. Plaintiffs assert that we "produced no evidence below of undue cost, time or other practical obstacle" to this effect. Br., p. 31. They are clearly wrong.

First, the rule even on its face is not uniform.

Second, the stipulated facts state:

> 46. It is possible that there will be on the same ballot Republican Party primaries for offices (e.g., Congress) for which unaffiliated voters may vote under the Rule, together with offices (e.g., state senator, state representative) for which they may not vote.
>
> In such instances, special procedures will be necessary, as a practical matter, if the Republican Party Rule becomes effective. These procedures will, among other things, require that separate and distinct ballot labels be provided for unaffiliated electors either on the same or separate and additional voting machines. In addition, election officials, including voting machine mechanics and voting machine tenders, will require special training.
>
> 47. Furthermore, unaffiliated voters will have to be separated from enrolled members of other major political parties, including the Democratic Party, because they will not be permitted to vote on any Democratic ballot.
>
> 48. In all towns where primaries are held for offices for which unaffiliateds may participate under the party Rule, additional officials, as well as additional voting machines may, in many cases, be necessary to accommodate these voters.

Joint Statement of Facts, Appendix to Jurisdictional Statement Vol. II, pp. 267-69 (emphasis added).

In addition, the parties also stipulated:

> 52. If the Rule becomes effective, there will be a question as to what ballot the town clerk should send to an unaffiliated voter who requests one for a Republican primary. This question will be due to uncertainty as to what that voter's status will be on primary day. See Conn. Gen. Stat. §§ 9-133d, 9-140.

Supplemental Joint Statement of Facts, Id. at 286-87.

Plaintiff Weicker himself admitted to the legislature that the party "rule" would be expensive to administer:

> Rep. Atkins: * * * [A]n unaffiliated voter could only in that case vote for a congressional candidate, but not a state rep candidate. Wouldn't that be a costly proposal?
>
> Sen. Weicker: That's correct. I think that now, and I can only guess at the motivation of the delegates * * *

Leg. Add. to Appellant's brief, p. 9a.

As one Republican legislator also warned:

> Rep. Foley: * * * [C]ertainly we would have to have two machines [in] each district. If the Democrats decided to have the unaffiliates also within their primary at a future date, it might mean four machines.... [H]ere we are mandating costs for municipalities without providing compensation for them. * * *

Id. at 13a.

Professor Ronald D. Rotunda, a constitutional law specialist who was among those the District Court invited to participate as amicus curiae, stated: [3/]

> [Plaintiffs "rule"] does not open up all Republican primaries; it only opens up primary elections for certain electoral offices. If a primary election for the office of U.S. Senator takes place at the same time as a Primary election for city mayor or State Senator, for example, then the burden on state election judges may well be heavy and the confusion on the voters great. And, if the Republican Party can, unilaterally, impose such burdens on state primaries, then the Democratic Party should also be able to impose its own rules contrary to state law.
>
> The principle advocated by the plaintiff in this case seems to be that any state political party can invalidate all (or a portion) of any state law to which it objects. Even though a nonparty member could not force an open primary and invalidate the law, the political party could, if it chooses to do so. This principle does not find support in the case law.

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3/ His works include Treatise on Constitutional Law, Substance and Procedure (1986), (co-authored with J. Nowak and J. Young) and Constitutional and Statutory Restrictions On Political Parties In The Wake Of Cousins v. Wigoda, 53 Tex. L.R. 935 (1975).

Appendix to Jurisdictional Statement, V.II, pp. 240-41.[4/]

When the Governor vetoed a bill in 1985 which would have allowed the parties to set their own rules for primary voter qualifications, he stated:

> It allows political parties to pick and choose which primaries are open to such participation, and allows the parties to change the eligible primaries when it becomes politically expedient to do so. If the parties were thus allowed to change their rules from election to election, this would create administrative chaos in the Office of the Secretary of the State and the offices of Town Clerks.

Governor's Veto Message, Appellant's Brief, Leg. Add., pp. 56a-57a, referring to Sen. Bill 5.[5/]

In urging that that veto be sustained, Senator O'Leary stated:

> I can't imagine anything more chaotic than to allow each respective political party, when the whim hit them in convention, every two years, to draw up a set of rules that would govern an election process .... there's bound to be differences

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4/ Contained also in Joint Appendix, pp. 110-15. Plaintiffs never objected to this letter.

5/ For the Governor's other reasons, see id. at 54a-56a.

> and discrepancies and confusion....[in] the system whereby our leadership is derived.
>
> * * *

28 Conn. Sen. Proc., Pt. 15, July 1985 reconvened Session, pp. 5818-19.

Two Republican Senators joined in supporting the Governor's veto. Id. at 5824; Conn. State Register and Manual 1985, p. 157.

Much is made by appellees of legislative testimony by Mr. Lenge, Director of the Secretary of the State's Election Division. Contrary to appellees' claim, however, he never said that monitoring unaffiliated voter participation would be "easily resolvable." Br., p. 32. Compare his complete testimony at J.A. pp. 89-93. He also did not say that absentee ballots could be prepared and distributed "without problem." Br., p. 31-2. He stated that town clerks would have to "print two versions of the absentee ballot and direct those respective versions to members of the party or unaffiliated electors as the case may be." J.A. 91-92. He also advised "that

there be two [voting] machines set up with two different ballot strips depending upon who is entering the machine." J.A. 92.

Mr. Lenge, moreover, had been asked only whether the bill allowing parties to set their own primary qualifications was "mechanically and technically possible" and whether the bill could be implemented under present statutes. J.A. 89. He was not asked what administrative burdens or practical problems would be involved, or whether there would be any voting mistakes, voter confusion or disruption. He was also not asked what additional costs would be imposed. Id.

After the Supreme Court noted probable jurisdiction, the Court of Appeals, on April 17, 1986, granted the State's request for a stay. The State's application was based on affidavits from Mr. Lenge, Director of Elections, both the Republican and Democratic Registrars of Voters of Bridgeport, Connecticut, and other materials previously discussed.[6/]

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6/ A certified copy of the additional part of the record comprising the stay file was transmitted to

(footnote cont'd)

As this Court has ruled, "[w]e may properly take judicial notice of the record in the litigation between the same parties who are now before us." Shuttlesworth v. Birmingham, 394 U.S. 147, 156-57 (1969), referring to related proceedings. [7/] In his affidavit, Mr. Lenge stated that to have the same voting machine serve different classes of voters as required by plaintiffs' "rule" would involve not only a major training effort for mechanics, but also "voter confusion and substantial burdens on state election administration." Add., 32a. Votes could be

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(footnote cont'd from previous page)

the Supreme Court by the Court of Appeals on July 23, 1986. See Rule 13.1, Supreme Court Rules.

7/ Accord, National Fire Ins. Co. v. Thompson, 281 U.S. 331, 36-37 (1930), and cases cited therein: Bryant v. Carleson, 444 F.2d 353, 357-58 (9th Cir. 1971), "[W]e take judicial notice of a number of developments since the taking of this appeal," including affidavits and documents filed in the court below and stay proceedings); Jacques v. United States RR Retirement Bd., 736 F.2d 34, 40 (2d Cir. 1984). ITT Rayonier, Inc. v. United States, 651 F.2d 343, 345 n.2 (5th Cir. 1981).

improperly restricted due to mechanical programming error.

In addition, "[o]perator error on otherwise properly programmed voting machines is likely to occur," due to the need to move an exterior latch to the correct position, depending on each voter's status. Id. at 34a. The Bridgeport Registrars in their bipartisan affidavit also confirmed this.

As an alternative, separate machines could be used, the Elections Director stated, but "there are practical difficulties and administrative burdens associated with this measure... [which] would be substantial" if voter turnout was large. Id. at 35a. He estimated that some towns would not have enough voting machines, which cost up to $2895 each. Id. In addition, "[T]he possibility of administrative mistakes exists, namely allowing the wrong elector into the segregated machines." Id. at 36a.[8/] "The potential for this kind of

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8/ The elections Director referred to a 1979 town primary where Democrats and unaffiliated voters

(footnote cont'd)

error is greatly magnified when unaffiliated electors are permitted to vote in a party primary for some but not all of the offices that the party members can vote for." Id. at 36a-37a. These problems, too, were corroborated by the Bridgeport Registrars who also stated:

> Some of this [inability of election personnel] is due to inexperience and the fact that this is an infrequent job for these poll workers. Under this party rule we feel that these problems will compound.
>
> The hiring of fifty-nine (59) additional poll workers will create another problem in this kind of primary. Even under the existing system, without this party rule, there are occasions when we do not have the polling positions filled until the day before the election and sometimes not until the day of election. The hiring of poll workers, to us, would be the most difficult problem to solve in this kind of primary. We have a large Hispanic population so therefore consideration must be given to the hiring of bi-lingual workers with their instructions and associated problems.

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(footnote cont'd from previous page)

> had been erroneously permitted into the Republican voting machines. The State Superior Court had to order a new primary as a result. Id. at 36a, 43a-44a.

Based on their experience, the Registrars foresaw the possibility of "unaffiliated voters trying to vote for offices other than those they are entitled to under the party rule, the possibility of voters getting into the wrong lines and poll workers not following instructions given under the new rule." Id.

Although it might also be possible to use paper ballots instead of more machines, these "procedures are antiquated and unfamiliar to most local officials," and also involve much time and possible inaccuracies, according to the Elections Director. Id. at 37a. Absentee ballot expense and possibility of error would also be increased and other costs also incurred by the public. Id. The Director of Elections concluded:

> 12. As I stated before the General Assembly when asked whether an open primary for restricted offices is "workable", I meant when I said that such a primary is "workable" that it is mechanically possible, but the mechanics of implementation, outlined above, involve risks of voting error, voter confusion and serious administrative problems as well as additional expense.
>
> 13. Of course, these problems would be compounded if the Democratic Party adopted a

similar party rule which they could claim that they are entitled to do under the court's decision. Id. at 41a.

Although appellees opposed the stay, they never disputed these affidavits with any of their own at the time. 9/

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9/ On August 5, 1986, they moved to vacate the stay and provided, inter alia, an affidavit from a Republican registrar claiming that there would be "no administrative difficulties" in carrying out the party "rule." The State submitted opposing affidavits from not only the Elections Director, but also a voting machine mechanic instructor and three Republican Registrars of Voters. Two of these were from municipalities with conflicting voter qualifications in Darien and Norwalk. These affidavits confirmed the difficulties previously described, now aggravated by lack of time. The need to hire and train additional workers was considered by the Norwalk Republican Registrar to be the most serious problem. Id. at 101-02a. Even in Greenwich, with no conflicting voter qualifications, plaintiffs' rule would double the cost of the primary, chiefly because of the need for more workers. Id. at 114a. The Republican Registrar there stated that "[i]f the Party Rule is required to be enforced, then I believe this would cause difficult problems for our town primary election." Id. at 113a. The Court of Appeals denied plaintiffs' motion to vacate the stay on Aug. 21, 1986. Id. at 119a.

Plaintiffs claim that the lower courts rejected the State's position that the "rule" may seriously interfere with public administration of primary elections, and that this Court is powerless to review this matter.

First, the District made no findings at all on this important issue, and did not even include it in the interests "principally" relied on by the State, 599 F.Supp. at 1238. The Court of Appeals never discussed the problem of administering conflicting voter qualifications.

The stipulated facts concerning the increased administrative burden and cost due to conflicting voter qualifications and the accompanying legislative evidence, previously discussed, were not dealt with in the rulings below. See Appellant's brief, pp. 74-78.

When a constitutional decision depends upon the facts, these "constitutional facts" may be independently evaluated by the Supreme Court, although previously ruled on below. 2 C. Antieau, Modern Constitutional Law (1969), 700. "[T]he Court may ascertain as it sees fit any

fact that is merely a ground for laying down a rule of law...." Chastleton Corp. v. Sinclair, 264 U.S. 543, 548 (1924) (Holmes, J.). [10/]

The prospect of voter confusion due to conflicting voter qualifications goes beyond the administrative burden, formidable as it is. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Reynolds v. Sims, 377 U.S. 533, 555 (1964). Such debasement or dillution can occur just as readily by voter confusion and election mistakes as it can by outright abuses.

## II. THERE IS NOTHING IN THE RECORD TO SHOW THAT THE STATE STATUTE DENIES THE PLAINTIFFS A FAIR CHANCE TO INFLUENCE THE POLITICAL PROCESS.

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10/ "[W]henever a conclusion of law of a state court as to a federal right and finding of fact are so intermingled that the latter control the former, it is incumbent upon us to analyze the facts ...." Norris v. State of Alabama, 294 U.S. 587, 590 (1935) (Hughes, C.J.). "If this requires an examination of evidence, that examination must be made." Id.

In Davis v. Pandemer, ____U.S._____, 54 L.W. 4898 (1986), this Court held that plaintiffs must prove "both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group to show that a redistricting plan violated the Equal Protection clause." Id. at 4903 (emphasis added). The Court noted that "the power to influence the political process is not limited to winning elections." Id. at 4904. "[U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or groups of voters' influence on the political process as a whole." Id. at 4905. There must be evidence of "continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process." Id.

Otherwise, attacks on state plans "would too much embroil the judiciary in second-guessing what has consistently been referred to as a political task for the

legislature, a task that should not be monitored too closely unless the express or tacit goal is to effect its removal from legislative halls." Id. at 4905. The same considerations should apply here because a State "is free to structure its political system to meet its 'special concerns and political circumstances' " and the State's electoral system is entitled to "substantial deference." Rodriquez v. Popular Democratic Party, 457 U.S. 1, 13-14 (1982).

Although plaintiffs claim that they are in the minority (Br., p. 2, 26), their party now controls the State legislature and half of Connecticut's Congressional seats. Conn. State Register and Manual 1985, pp. 119-33, 179, 181. Moreover, there is nothing in the record which shows that the State law which applies equally to both parties and which was also passed by a Republican House of Representatives [11/] has caused plaintiffs to suffer any

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11/ Plaintiffs admit that the Court of Appeal erred on this point. Br., p. 6 n.2. However, their claim that

(footnote cont'd)

electoral loss.

Plaintiffs claim that their rule "represents a determination by the Party" that a coalition with many independents will give the Party a chance to rule. Br., p. 18. It is also alleged that the "rule" will result in bipartisan support for the Party. Id. at 20-21.

There is absolutely nothing in the record to show that the Party determined any of this, or why the rule was adopted. Nor is there anything in the record to show that the Rule may in any way achieve these objectives. As appellees themselves have emphasized, there was no evidence admitted before the Court other than stipulated facts and documents.[12/]

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their 1984 legislative proposals were defeated by voting along "strict party lines" (Br., p. 6) is not correct. Nine Republicans joined in defeating one of these amendments, and eight Republicans voted against another. J.S. App. 259 (referring to stipulation).

12/ Appellees' brief, p.7 n.4. This is in addition to the legislative transcripts which appellant provided the Court at its request.

Furthermore, as stated in our prior brief on the merits (p.70), some of the Republican subcommittee members when deposed even contradicted plaintiffs' claim that they had concluded: "[T]he Republican Party would: increase its chances of winning general elections; nominate candidates with greater bipartisan support; increase the involvement of unaffiliated voters in the electoral process in general, and strengthen the two party system by allowing unaffiliated voters to vote in Republican Party primaries." J.S. App. 249-50.

After the depositions, this proposed stipulation was dropped. J.S. App. 281-87. The withdrawal also followed discovery admissions suggesting that the "rule" might have been motivated at least in part by Weicker's interest, as distinguished from the party's, in obtaining his nominations with the help of unaffiliated voter support. See Appellant's brief, p. 69; J.A. 116-29.[13/]

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13/ Plaintiffs complain that certain depositions previously cited were not originally filed with the

(footnote cont'd)

Plaintiffs also assert: "There is no dispute...that the party rule was formally adopted by the entire

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District Court. Br., p. 7 n.4. They were not originally filed because of two of the witnesses who were members of plaintiff party's subcommittee and who were represented by plaintiffs' previous counsel had neglected to return their signed copies to the Court Reporter. See affidavit of reporter, add. at 27a.

Plaintiffs also cite a District Court Order, entered long after the appeal was taken to the Supreme Court, to the effect that appellant had cited in her Supreme Court brief deposition material "not presented to the District Court or relied upon by either party...." Br., p. 7 n.4. The language from that Order was taken almost verbatim from a draft submitted by plaintiffs without prior notice to appellant, a draft not received by us until three days after the District Court issued its order. Furthermore, the order is incorrect. In her objection to summary judgment, appellant stated that the affidavit originally relied on by plaintiffs was "disputed by discovery materials." J.S. App. 163, 171. Appellant also relied on discovery materials in her Answers to Interrogatories, July 10, 1984, and Motion to Compel, July 9, 1984, in support of her position that plaintiffs' "rule" was intended to "promote the personal interests of one or more of the plaintiffs as incumbents in office." The District Court recognized this dispute in denying motions for summary judgment and providing for discovery on July 6, 1984, and in

(footnote cont'd)

Republican Party after initiation by the State Central Committee, [and] study by a subcommitee of diverse Party members...." Br., p 7 n.4. There is absolutely nothing in the record to show that the "entire Republican Party" adopted the "rule." The stipulated documents show that only 57% of a party convention composed of delegates not chosen to deal with this issue but who were

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overruling plaintiffs' discovery objections on July 9, 1984. J.S. App. 274-80; add. at 11a-18a.

The District Court Order on which plaintiffs' rely is also incorrect when it states "no part of these or any other depositions was presented to this court...." Order April 14, 1986, p. 2. The record shows that the D'Amore and Gold depositions were provided to Judge Cabranes himself on July 24, 1986. See Court reporter's letter, add., at 23a; docket entries July 25, 1984, J.A. 4.

In addition, the letter mailed by Senator Weicker in his 1982 campaign for the Republican U.S. Senator nomination, urging Independents to register with his party so they could vote for him in the upcoming primary, was by agreement included in the Joint Appendix in the Court of Appeals. Add. at 24a-25a; see J.A. 116-19 (Ex. I to D'Amore deposition).

instead holdovers from a prior convention voted for the "rule." J.A. 49-64, 71-72; appellant's brief, p. 72 n.26.

Plaintiffs' other claim is in fact sharply disputed, based on the deposition of Thomas D'Amore, Weicker's former campaign manager and present party chairman. Plaintiffs' obtained from the District Court an order, over objection, placing the entire deposition under seal.[14/] For that reason, we are unable to quote from it. However, we refer the Court to pp. 28-30, 48-50, 53-54, 56, 59-60, 63, 67, 69, 72, 74, 76-78, 202-03 of that deposition. Plaintiffs also assert (br., p. 7 n.4) that any suggestion that the "rule" was motivated by " 'personal interests' " of one of the plaintiffs (i.e., Weicker), is "wholly unsupportable." Brief, p. 7 n.4. The depositions show quite the contrary.[15/] Furthermore, plaintiffs' admissions (which

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14/ Protective Order, July 26, 1984, in Record. The Gold deposition and the Response to the Request for Production were also sealed, over objection.

15/ See, e.g., D'Amore dep., pp. 14-28, 32-34, 36-38, 82, 84-88, 97-107, 111-13, 116,129-31, 134-35,

(footnote cont'd)

are not under seal) showed that the Senator when challenged for renomination in 1982 said that without an influx of non-Republicans his opponent could win the Republican primary. He tried to solicit independents to register Republican for the purpose of the primary. J.A. 116-129. In a letter to independents, he said, "I need your help...I need your vote." J.A. 116-19 (emphasis in original). Plaintiffs further admitted that the 1984 attempt to include unaffiliated voters in Republican Party primaries indicated that Weicker was "using his position as titular head of the Republican Party to pave the way for a strong gubernatorial run [by him]." J.A. 125-29.

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148-49, 156, 177-82, 192-93; Ex. for id., C-1, C-2, D(p.1), G-K, O, P, T, V, W,X; Gold dep., pp. 39-44, 48-49, 55-71, 87-92, 105-07, 112-15, 120-23, 148, 155-61, 167, 173-76, 182-83; Ex. for id., A-1, 2, 8, 13. See also dep. of Mae Schmidle, subcommittee member and Weicker supporter, who was aware of Weicker's efforts to have unaffiliated voters register Republican in 1982. Add., at 6a-10a (not under seal).

In view of the fact that the stipulations were silent as to the reasons for the plaintiffs' "rule", and that the discovery admissions contradicted plaintiffs' original claims on these matters, it was improper and unfair for the Court of Appeals to make any assumptions as to the subcommittee's reasons. J.S. App. 22, 107-08.

Nor is there anything in the record that would show that the "rule" would in fact achieve plaintiffs' alleged objectives. A subcommittee member acknowledged as to plaintiffs' claim of "greater bipartisan support" due to the "rule": "Bipartisan support is usually Republican and Democrat, and the Democrats--we have not asked to allow the Democrats to vote in our primaries." Deposition of Fred H. Lovegrove, Jr., July 13, 1984, p.9. Ms. Schmidle of the subcommittee, referring to plaintiffs' original claim about the subcommittee's conclusions. stated: "The first thing I said maybe was to increase your chances of winning elections, no one has proved that...." Dep. of Mae Schmidle, July 13, 1984,

p.29.[16/]

It is said that the State law prevents plaintiffs from soliciting independent support, selecting their own "ideology or constituency," expanding voter participation in their "candidate selection process," adding new members, forming new coalitions and appealing to a diverse electorate. Br., pp. 9,11, 13, 15, 23. However, there is absolutely nothing in the record to support these charges. Plaintiffs are completely free under State law to poll independents, consider their views in all party affairs, and solicit their votes in the general election. More important, they can urge independents to become Republicans, as Senator Weicker did in 1982. They are certainly free to select their own ideology, to expand

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16/ Even one of the articles cited by plaintiffs acknowledges: "There are obvious limitations on our ability to explain variations in voting turnout by using aggregate data." Jewell, Voting Turnout In State Gubernatorial Primaries, 20 W. Pol. Q. 236 (1977). See also J. Clotfelter and C. Prysby, Political Choices, A Study of Elections and Voters 29 (1980).

their own membership, and to appeal to a diverse electorate. The state statute is completely neutral in this respect. See Appellant's brief, pp. 62-66.

Party enrollment, furthermore, requires only that one fill out a short form up to twelve noon the last business day before a primary to vote in that primary. Conn. Gen. Stat., § 9-56. No loyalty oath or fee is required. Id. If an unaffiliated chooses not to register Republican, this is due to that voter's personal decision, not the State law.

Furthermore, plaintiffs claim that absent unconstitutionality the party's "right to choose its members and its requirements for participation in party affairs remain[s] absolute," (br., p. 16, emphasis added) itself has very dangerous overtones. For example, one of the articles cited by plaintiffs states:

> "[T]he party can determine how potential affiliates must demonstrate that they meet affiliation requirements. Such a determination could involve an examination of the beliefs of these potential affiliates. This ability to inquire into such beliefs or actions is necessary to

> implement the party's associational right to define its shared purposes and to set its own boundaries. See Democratic Party v. Wisconsin, 450 U.S. 107, 122 (1981). [Recognizing, however, that "the party's action might violate an individual right of privacy...."]

Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L.J. 117, 126-27 n.50 (1984) (emphasis added). Compare, e.g., Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957) ("Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters. These are rights which are safeguarded by the Bill of Rights and the Fourteenth Amendment.")

## III. APPELLEES IGNORE THE CONSTITUTIONALLY ORDAINED ROLE OF THE STATES IN ELECTION ADMINISTRATION AND THE REQUIREMENT FOR NONDISCRIMINATORY QUALIFICATIONS UNDER ART. I.

Appellees claim that under Ray v. Blair, 343 U.S. 214 (1952), state primaries are not subject to certain Constitutional protections. Br., p. 43. This is based on a

key omission in their quote from that case. The entire sentence should read: "The fact that the primary is a part of the election machinery is immaterial unless the requirement of pledge violates some constitutional or statutory provision." 343 U.S. 227 (emphasis added). Appellees omitted the underlined clause.

It is the vital electoral role of the States, as provided under Art. I, §§ 2 and 4 and other authorities cited in appellant's brief, pp. 22-27, 70-88, and 93-96, which distinguishes this case from one involving the associational rights of a private debating society.

Appellees also rely on Newberry v. United States, 256 U.S. 232 (1921), in asserting that primary elections are not guarded by Art. I. Br., p. 44. However, as this Court recognized in Buckley v. Valeo, 424 U.S. 1, 13-14 n.16 (1976):

> Although the Court at one time indicated that party primary contests were not "elections" within the meaning of Art. I, § 4, Newberry v. United States, 256 U.S. 232, 41 S.Ct. 469, 65 L.Ed. 913 (1921), it later held that primary elections were

> within the Constitution's grant of authority to Congress, United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368 (1941).

Appellees' argument, therefore, undercuts Congressional authority as it does that of the States.

Appellees' assertion that "[t]he founding fathers clearly did not anticipate that Article I, § 2 would apply to primaries, as neither political parties nor primaries then existed" (br., p. 44), is the very one this Court rejected in United States v. Classic, 313 U.S. 299, 315-16 (1941), when it stated:

> We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses.... [as] a continuing instrument of government [citations omitted]. If we remember that "it is a

> Constitution we are expounding", we cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the Constitutional purpose.

Appellees' claim that the "State cites no authority" to show that voter qualifications for Congressional and State legislative primaries be equal and non-discriminatory simply ignores the Supreme Court decisions, The Federalist, and other authorities discussed in appellant's brief, pp. 89-93.

## IV. APPELLEES HAVE MADE IMPORTANT ADMISSIONS CONCERNING THE STATE'S INTEREST IN REGULATING MAJOR PARTY PRIMARIES.

Appellees have made some key admissions in their attack on the statute. First, they acknowledge that "because primaries are an integral part of a state's electoral system the conduct of political parties in a primary may constitute state action under the Fourteenth and Fifteenth Amendments." Br., pp. 10-11.[17/] This

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17/ This is in marked contrast to the District Court decision, which attempted to dismiss this principle

(footnote cont'd)

indicates that Art. I should also apply because its "command...is secured against the action of individuals as well as of states," United States v. Classic, supra, at 315. Second, the fact that state action may be involved here underscores that we are dealing with a matter of legitimate State interest.

Appellees also admit that the State "might further require the party to establish that its proposed Rule is administratively feasible." Br., p. 36. In view of the stipulated facts and other materials discussed previously, plaintiffs fail their own test. Their "rule" lacks even the safeguards that the Director of Elections stated would be needed. J.A. 90-93.

Plaintiffs also acknowledge that the "State could provide for a temporary and non-disclosable affiliation

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> as one based on "mischaracterization of dicta." J.S. App. 156 (original language, later deleted in the opinion reported at 599 F.Supp. 1228).

for purposes of the primary only" which could occur on primary day. Br. p., 36.[18/] This represents a retreat from the District Court's opinion that "[a]ny effort by the state to substitute its judgment for that of the party on this question...substantially impinges on First Amendment rights," J.S. App. 185, as well as from that of the Court of Appeals. See J.S. App. 119-20, 132.

Furthermore, there is little difference between the affiliation requirement plaintiffs now suggest, and the one involved in this case. In Connecticut, one may affiliate with a party virtually one day before the primary and disaffiliate at any time. [19/] Since when is a 24 hour difference enough to invalidate an election law?

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18/ This remarkable concession even at this late stage demonstrates that appellees recognize that the administrative burdens of this "rule" are real and that the "burden," if any, of the State law is absolutely negligible.

19/ Conn. Gen. Stats. §§ 9-56, 9-59. One who disaffiliates cannot vote in another party's primary for six months.

Plaintiffs' arguments would bog down the judiciary in mindless quibbles on how an election should be run and invite innumerable challenges, based not on unfair burdens but on narrow partisan self-interest.

Plaintiffs also concede that Democratic Party v. Wisconsin, 450 U.S. 107 (1981), and Cousins v. Wigoda, 419 U.S. 477 (1975),

> "involved a national party's rules for presidential delegate selection, and that different considerations may apply to state involvement in a state party's primary....[A] state's interest under Art. I, § 2 and § 4 and the Seventeenth Amendment in supervising wholly internal elections is more direct than its responsibility over national presidential elections." Br., pp. 37-38.[20/]

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20/ A recent treatise notes that Democratic Party did not decide the issue of a state's regulation of a state political party convention. "There is certainly no absolute right of a political party to control its membership in all circumstances; the White Primary cases and open primary cases are proof of that." Rotunda, J. Nowak and J. Young, 2 Treatise On Constitutional Law (1986) 652. See also id. at n.55. Furthermore, "[a] political party, certainly a major political [party], is not an intimate association," referring to Roberts v. United States Jaycees, 468 U.S. _____, 104 S.Ct. 3244 (1984). Id. at 651 n.54.

Plaintiffs' claims, however, that only "internal party processes" are involved here (br., p. 38), are completely refuted by the substantial public burden and expense of their "rule" and the State's other legitimate interests. Plaintiffs also admit that the State

> may establish minimum voter participation requirements in its state primaries greater than those adopted by a state party.... State laws directed to the conduct of a primary which are necessary to insure the fairness and representative character of the process clearly may serve compelling state interests and may override a party's competing First Amendment rights." Br., pp. 38-39.

This is another withdrawal from the almost absolutist position of the lower courts. See J.S. App. 119-20, 132, 185. It is asserted, nevertheless, that the party may allow ineligible persons to vote in a primary simply to "expand" voter participation. Br., pp. 14, 38-9. Can the party "expand" such voting to non-residents, sixteen year olds, aliens or others not registered to vote?

## CONCLUSION

There is nothing in the record to show that the state statute has "substantially disadvantaged" plaintiffs or is in any way unreasonable or discriminatory. See Davis v. Bandemer, supra, at 4905; compare Andersor v. Celebreze, 460 U.S. 780, 788 (1983). As plaintiffs themselves acknowledge, the States have an interest in ensuring a fair and representative nominating process. This includes the accountability of the major nominating parties, avoiding voter confusion due to misuse of the major party labels, and ensuring an orderly conduct of elections.

The requirement of the statute is de minimus but the administrative confusion and chaos due to party rules that could change every year would be substantial. An affirmance would envelop the federal courts in countless challenges and turn them into election boards in cases based simply on ever shifting partisan dictates. For all

the above-stated reasons, it is respectfully submitted that the judgment of the Court of Appeals should be reversed and that the case should be remanded with direction that judgment be entered for the appellant.

Respectfully Submitted

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September 1986

# ADDENDUM

NO. 85-766

In the Supreme Court of the United States

October Term, 1985

JULIA H. TASHJIAN,
Secretary of the State of Connecticut,
Appellant,

v.

REPUBLICAN PARTY of the STATE of CONNECTICUT, LOWELL P. WEICKER, JR., STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE, JR.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**ADDENDUM**

DEPOSITION OF MAE SCHMIDLE,
MEMBER OF PLAINTIFF PARTY'S SUBCOMMITTEE
WHICH HAD RECOMMENDED THAT UNAFFILIATEDS
VOTE IN REPUBLICAN PRIMARIES, JULY 13, 1984

* * *

Q [Mr. Schaefer] [referring to conclusions plaintiffs claimed their subcommittee reached in recommending original version of party rule, in Ex. A for Id., Joint Statement of Facts, proposed ¶ 11, which was later withdrawn]

All right. That refers to what the subcommittee concluded, correct?

A This document says that's what the subcommittee concluded. I'm not sure that those were my conclusions.

Q All right. Could you please elaborate?

A Well, I would take these items one by one and give you my reaction to them

and then I will tell you where I'm coming from. It says Republican Party, that it would increase its chances of winning in general elections. My answer to that is maybe. I certainly would not be definite on that point. That it would nominate candidates with greater bipartisan support, again my response to that is maybe. That it would increase the involvement of unaffiliated voters in the electoral process in general, my response to that is absolutely. I think that's exactly what would happen and I think that's good. That it would strengthen the two-party system by allowing the two-party system to participate in Republican Party primaries, maybe.

Q All right. When you say "maybe", what do you mean by that?

A Well, I think that's a matter of somebody's opinion. I don't really think that anybody can prove conclusively that you're going to strengthen the two-party system any more than you can conclude you're going to weaken the two-party system.

Q Has that been proved in your own mind that it will strengthen the two-party system?

A I think that's possible, but I don't have any proof positive. I think you have to go through a couple elections and then compare after.

Q For the other matters that you refer to as maybe, is it fair to say those have not been proven to your satisfaction at this point?

A The first thing I said maybe to was increase your chance of winning general elections, no one has proved that, and to nominate candidates with greater bipartisan support, maybe. And increase the involvement of unaffiliated voters, I say absolutely.

Q Increase its chances of winning general elections, no one has proved that, in your opinion?

A Right.

Q Nominate candidates with greater bipartisan support, no one has proved that in your opinion?

A That's right.

pp. 28-29.

* * *

MR. SCHAEFER: Referring to this conclusion about what the subcommittee concluded.

A You know, I sort of feel that the way in which this is phrased, it sort of is putting words in the mouth of all Republicans or maybe words in the mouth of the Republican Party.

p. 34.

* * *

Q Is it fair to say that you were a supporter of Senator Weicker?

A It's fair to say that I have supported him and I have voted for him. I am not a carte blanche supporter of Senator Weicker. You know, we have a kind of relationship where I can tell him that I disagree with some of what he's doing.

pp. 69-70

* * *

Q Did you say you did attend the 1982 state convention?

A What I said to you was I think I did, I missed one convention along the line, but I can't remember. Eighty-two was the Bush-Weicker, I was there.

Q Who was your choice between Weicker and Bush?

A My choice was Weicker.

p. 72

* * *

Q Were you aware there were many Republicans who opposed Senator Weicker?

A Yes.

Q Were you aware that there were many Independents that supported Senator Weicker?

Q I was aware that there were some. I certainly didn't know numbers. The same way with Republicans. I was aware there were some.

pp. 72-73

* * *

Q You're aware today that there are many Republicans that do not like Senator Weicker?

A I know there are some.

Q You're aware that today he has substantial support among Independent voters, isn't that true?

A Again, I cannot agree or disagree with your word "substantial." I know there are unaffiliated voters. We don't have Independent voters in the State of Connecticut. There are unaffiliated voters who support Senator Weicker, yes.

pp. 73-74

* * *

Q You're aware that in the first part of 1982, Senator Weicker sought to have Independents register as Republicans? Are you aware of that fact?

A I'm aware that there was a move to have unaffiliated voters register with the party and there also was an even greater move to have Democrats change their affiliation.

Q But that effort was directed to both Democrats and unaffiliated voters as well?

A I think so.

Q Did that occur in your area?

A I think it occurred all across the state.

p. 75

* * *

Q Okay. You're aware that Senator Weicker believed that this was in his interest?

A Well, I would have assumed that he would believe that, otherwise he wouldn't be doing it.

p. 76

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

(Title omitted in printing)

July 5, 1984

EXCERPTS FROM PLAINTIFFS' OBJECTION TO DEFENDANT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS, WITH COURT'S ENDORSEMENT OVERRULING OBJECTION

Plaintiffs, through counsel, object to each and every request for production of documents contained in defendant's request, dated June 29, 1984. All requests are directed to ascertaining the purpose of the plaintiff Republican Party in adopting its Rule. The question of plaintiff's purpose or motivation is not relevant to the determination of the Constitutional issues before this Court and, as such, defendant's request is not reasonably calculated to the discovery of admissible evidence.

In addition, plaintiffs object to the following specific production requests:

1. Any and all polling data, including cross tabulations from January 1, 1982 until the present on the subject of Senator Weicker, including but not limited to that data which concerns his support among Republicans, unaffiliated voters and Democrats and that data which concerned his support as opposed to support for Prescott Bush, Jr.

OBJECTION: The information sought is clearly not relevant to this action as it relates to materials relating to the political campaign conducted by plaintiff Weicker nearly two years prior to the adoption of plaintiff's Rule. Such discovery request seeks information which was developed by plaintiff Weicker in connection with said campaign and is proprietary in nature. Discovery of such information would constitute an impermissible intrusion into plaintiff's political campaign, its activities, strategy and procedure and is not reasonably calculated to the discovery of admissible evidence.

2. Sample letters soliciting Democrats and unaffiliated voters to change their registration to Republican from January 1, 1982 to the present.

OBJECTION: This request, particularly concerning plaintiff's efforts relative to Democratic voters, is not reasonably calculated to lead to the discovery of admissible evidence.

3. Any and all documents, papers, notes or memoranda concerning the efforts of Senator Weicker's campaign to solicit changes in registration as stated in paragraph 2 herein, including but not limited to discussions of strategy and/or the reasons for such efforts.

OBJECTION: The information sought is clearly not relevant to this action as it relates to materials relating to the political campaign conducted by plaintiff Lowell Weicker nearly two years prior to the adoption of plaintiff's Rule. Such discovery request seeks information which was developed by plaintiff Weicker and is proprietary in nature. Discovery of such

information would constitute an impermissible intrustion into plaintiff's political campaign, its activities, strategy and procedure and is not reasonably calculated to the discovery of admissible evidence.

*  *  *

THE PLAINTIFFS

(Signature and Certification omitted in printing)

(Court's endorsement overruling objection)

One of the three issues in dispute is what conclusions were reached by the subcommittee of the Republican State Central Committee regarding the purposes to be served by the party rule at issue in this litigation. See Joint Statement of Facts (filed June 6, 1984) ¶ 11. Thus plaintiffs' argument that discovery directed at this question is irrelevant is not persuasive. Accordingly, the plaintiffs' objection is hereby overruled. See Rule 26(b)(1), Fed. R. Civ. P. (information sought in discovery need only appear "reasonably calculated to lead to the discovery of admissible evidence"); 4 Moore's Federal Practice ¶ 26.56[1] (2d ed. 1983). Plaintiffs may make whatever applications concerning a protective order, pursuant to Rule 26(c)(7), Fed. R. Civ. P., that they deem appropriate in the circumstances. So ordered.

Hartford, CT
July 9, 1984

/s/Jose A. Cabranes
Jose A. Cabranes, U.S.D.J.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

(Title omitted in printing)

JULY 9, 1984

MOTION TO COMPEL, JULY 9, 1984,
WITH COURT'S ENDORSEMENT GRANTING MOTION

Defendant respectfully moves for an order to Compel, pursuant to Rule 37, Federal Rules of Civil Procedure, compliance with its request for production dated June 29, 1984 on the grounds that the materials sought are reasonably calculated to lead to admissible evidence and are otherwise properly discoverable in respect to paragraph 11 of the proposed stipulation. Such materials are reasonably calculated to demonstrate that the "rule" in paragraph 7 of the complaint was intended, among other things,

1. To promote the personal political interests of one or more of the plaintiffs.

2. To promote the personal interests of one or more of the plaintiffs as incumbents in office.

3. To generate favorable publicity for the plaintiffs.

Defendant also moves to compel answers to the interrogatories dated June 29, 1984 which seek the substance and subject matter of testimony of plaintiffs' witnesses.

It is respectfully submitted that compliance with these discovery requests is

necessary several days in advance of the depositions which defendant has noticed for July 13, 1984.

DEFENDANT

(Signature and Certification omitted in printing)

Granted, see endorsement ruling on Objection to Defendant's Second Request for Production of Documents (filed July 5, 1984), entered this date. So ordered.

Hartford, CT
July 9, 1984

/s/Jose A. Cabranes
Jose A. Cabranes, U.S.D.J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

(Title omitted in printing)

EXCERPTS FROM DEFENDANT'S ANSWERS
TO INTERROGATORIES JULY 10, 1984

* * *

QUESTION 5. State the precise manner in which the defendant disputes that the members of the subcommittee established by the Republican Party of the State of Connecticut ("Republican Party") concluded that the party would increase its chances of winning general elections, nominate candidates with greater bipartisan support, increase the involvement of unaffiliated voters in the electoral process and strengthen the two party system by allowing unaffiliated voters to participate in Republican Party primaries, as referred to

in paragraph 11 of the Joint Statement of Facts.

ANSWER 5. Plaintiffs' "rule" was intended:

(1) To promote the personal political interests of one or more of the plaintiffs.

(2) To promote the personal interests of one or more of the plaintiffs as incumbents in office.

(3) To generate favorable publicity for the plaintiffs.

QUESTION 6. Identify the nature and source of the information relied upon by defendant in disputing the conclusions reached by the subcommittee, as referred to in paragraph 11 of the Joint Statement of Facts.

ANSWER 6. (1) Testimony and documents which are the subject of defendant's

discovery requests in this case and which have been or will be provided by plaintiffs.

(2) Documents provided by defendant in response to plaintiffs' request for production.

(3) Various polls concerning Senator Weicker conducted by the University of Connecticut which have been requested but not yet provided.

(4) Opinions of persons active in politics.

(5) Inferences drawn from the above that the "rule" intended for purposes set forth in Answer 5 herein.

* * *

QUESTION 8. Identify all documents relied upon by defendant in disputing the conclusions reached by the subcommittee, as

referred to in paragraph 11 of the Joint Statement of Facts.

ANSWER 8. (1) Documents which are the subject of discovery requests in this case and which have been or will be provided by plaintiffs.

(2) Documents provided by defendant to plaintiffs in response to plaintiffs' request for production.

(3) Various polls concerning Senator Weicker conducted by the University of Connecticut which have been requested but not provided.

* * *

Cunningham Reporting
Associates, Inc.
111 Gillett Street
Hartford, CT 06105
Tel: 521-3664

July 24, 1984

Judge Jose Cabranes
450 Main Street
Hartford, Connecticut

Re: Civil Action No. H-84-548
Republican Party of the
State of Conn., vs. Julia
H. Tashjian

Dear Judge Cabranes:

It is understood by our office that you are to receive the original transcripts of the depositions of Peter W. Gold and Thomas J. D'Amore, Jr. in the above captioned matter.

Also included are the exhibits to said depositions.

Sincerely yours,

CUNNINGHAM REPORTING
ASSOCIATES, INC.

Berta Stroshine

BAS
Enc.
cc: Stanley Twardy, Esq.
Ralph Elliott, Esq.
Daniel R. Schaefer, Esq.

Filed
Feb 21 4 00 PM '85
Clerk
U.S.DISTRICT COURT
HARTFORD,CONN.

| | |
|---|---|
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR., STEWART B. MCKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE,JR. | U.S.DISTRICT COURT DISTRICT OF CONN. |
| Plaintiffs-Appellees | CIVIL ACTION NO. H-84-548 (JAC) |
| V. | UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT |
| JULIA H. TASHJIAN, Secretary of the State of the State of Connecticut, | |
| Defendant-Appellant | FEBRUARY 20, 1985 |

STIPULATION

Pursuant to an agreement reached at the pre-argument conference for the Second Circuit on February 15, 1985, the parties stipulate that Exhibit I to the deposition

of Thomas J. D'Amore, Jr., taken on July 17, 1984, may be released from the protective order and may be included in the appendix to the briefs on appeal. This exhibit may be referred to as a letter mailed by Senator Weicker, Jr., in the 1982 campaign for the Republican nomination for the U.S. Senator.

PLAINTIFFS

By:/s/Stanley A. Twardy, Jr.
Stanley A.Twardy,Jr.
Silver, Golub Sandak
P.O. Box 389
Stamford,CT 06904
Tel:(203)325-4491

By:/s/Daniel R. Schaefer
Assistant Attorney General
30 Trinity Street
Hartford, CT 06416
(203)566-4990

Approved.
It is so ordered.
Hartford,CT 2/22/85

/s/ Jose A. Cabranes,
Jose A. Cabranes, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

(Title omitted in printing)

Filed Mar 20 4:02PM '86
Clerk
U.S. DISTRICT COURT
Hartford, Conn.

- - - - - - - - - - - - - - - - - - - - -

AFFIDAVIT OF MARGHERITA R. CUNNINGHAM,
OF MARCH 19, 1986

Margherita R. Cunningham, President, Cunningham Reporting Associates, Inc., a Connecticut corporation, being duly sworn, deposes and says:

That the depositions of Thomas F. Upson, Mae Schmidle and Fred H. Lovegrove, Jr., were taken on behalf of the Defendant in the above-captioned civil action on July 13, 1984, before Maureen C. O'Connor, a Court Reporter on the staff of Cunningham Reporting Associates, Inc.; that the

depositions were thereafter transcribed; that the reading and signing of the deposition of Thomas F. Upson were waived; that the depositions of Mae Schmidle and Fred H. Lovegrove, Jr., were submitted to the deponents for reading and signature; that the Deponents Schmidle and Lovegrove did not return their signed depositions to the Court Reporter for filing; that the deposition of Thomas F. Upson was not filed with the Clerk of the United States District Court within 30 days after transcribing because the Court Reporter was awaiting the return of the Schmidle and Lovegrove depositions; that upon the request of Daniel R. Schaefer, Assistant Attorney General of the State of Connecticut, duplicate originals of the three aforesaid deposition transcripts were

filed with the Clerk of the United States District Court, District of Connecticut, 450 Main Street, Hartford, Connecticut, on February 19, 1986; that Attorney Schaefer indicated at the time of his request that duplicate originals be filed that the subject case is now on appeal and carries Supreme Court of the United States Docket Number 85-766.

Margherita R. Cunningham, President
Cunningham Reporting Associates, Inc.

(Jurat omitted in printing)

AFFIDAVITS SUBMITTED BY DEFENDANT-APPELLANT

TO U.S. COURT OF APPEALS

FOR THE SECOND CIRCUIT

IN SUPPORT OF A STAY PENDING APPEAL

TO THE U.S. SUPREME COURT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

| | |
|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | :U.S. SUPREME COURT Docket No. 85-7011 |
| v. | : |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER,JR., STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE,JR. Appellees. | :U.S. COURT OF APPEALS Docket No. 85-7011 |

AFFIDAVIT OF ALBERT P. LENGE,
DIRECTOR OF ELECTIONS
Office of the Secretary
of the State for the
State of Connecticut

I, **Albert P. Lenge**, being duly sworn, hereby depose and say:

1. I am presently the Elections Attorney and Director of Elections for the State of Connecticut. I have served in

this capacity since December, 1981. As chief legal counsel to the Secretary of the State, who is Commissioner of Elections, my duties include advising municipal election officials on the proper discharge of their election responsibilities and for providing legal advice on election law, upon request.

2. The federal court decision declaring Connecticut's closed primary statute unconstitutional presents serious administrative problems relating to this year's primary elections for offices that will appear on the regular state election ballot on November 4, 1986. These primaries are scheduled for September 9, 1986.

3. In the event of a Republican Party primary where unaffiliated electors

will, by party rule, not be entitled to vote for all of the offices on the party's primary ballot, the state and the towns will have to face three possible alternatives. The first one would require the mechanical voting machines in use in Connecticut to be programmed in one of two different ways. Both methods of programming the machines are unknown to most Connecticut voting machine mechanics and this unfamiliarity will necessitate a major training effort throughout the state to ensure that all voting machine mechanics thoroughly understand the correct way to set-up the machine, resulting not only in expense to both the state government and municipal governments, but also voter confusion and substantial burdens on state election administration set forth below.

4. The foregoing programming difficulties will increase the chance of programming errors. For example, an unaffiliated elector may find that the latch which is thrown to restrict his vote with respect to certain offices, does not successfully restrict his vote. In other instances, party members entitled to vote for all offices on the ballot may find their vote restricted due to mechanical programming error. Programming errors will effect the ability of individuals to exercise properly their franchise, and depending on the number of such programming errors found to occur, and depending on the margin of victory for the primary candidates, a new primary may be a necessity.

5. If a new primary is ordered, there will not only be additional costs to the public but also possible delays in the election.

6. Operator error on otherwise properly programmed voting machines is likely to occur. For example, in instances in which unaffiliated voters are able to vote for some but not all offices on the party's primary ballot, a primary official will have to move an exterior latch on the voting machine into one of two positions in order to restrict the vote. Similarly, the latch would have to be moved back into the former position in order to expand the ballot of a party member entering the same voting machine after the ballot of an unaffiliated elector is cast. It is easy to envision, under these circumstances,

operator error by the primary officials serving in this capacity and, depending on the number of such operator errors found to occur, and depending on the margin of victory for the primary candidates, a new primary may be a necessity.

7. An alternative to programming the voting machines is to have unaffiliated electors use separate machines, and there are practical difficulties and administrative burdens associated with this measure. The degree of administrative burden would depend on voter turnout and would be substantial if there was a large percentage turnout. For example, it is reasonable to expect that some towns will not have enough voting machines, including a sufficient number of spare machines. These machines cost between $1400 to $2895

each, depending on models and features, according to quotes that have been given to me.

In addition, the possibility of administrative mistakes exists, namely allowing the wrong elector into the segregated machines. For example, the records of this office show that in a Republican Primary in the Town of Windsor for town council in 1979, 2 Democrats and 3 Unaffiliated electors were erroneously permitted into the Republican voting machines, necessitating a court ordered new primary. Please see attached Head Moderator's Return and Superior Court ruling. The potential for this kind of error is greatly magnified when unaffiliated electors are permitted to vote in a party primary for some but not all of

the offices that the party members can vote for.

8. Another alternative to programming the voting machines would be to allow the unaffiliated to vote by paper ballot, but there are practical difficulties associated with this procedure also. The Connecticut General Statutes relating to paper ballots have rarely been used in modern times. The procedures are antiquated and unfamiliar to most local officials. These procedures are quite different, and in some cases, contradictory to procedures required for elections using voting machines. Counting of paper ballots takes an inordinate amount of time and can be inaccurate because of problems associated with a large-scale manual tabulation process as well as problems

discerning the intent of the voter in ambiguously marked ballots. There of course would be printing costs connected with paper ballots that can not be estimated at this time.

9. In instances in which unaffiliated electors are able to vote for some but not all offices on the party's primary ballot, separately configurated absentee ballots for unaffiliated electors will have to be printed by the municipal clerks with additional printing costs borne by the municipality. These ballots will create an increased likelihood in the rate of error in mailing the correct ballots to electors offering to vote in a party's primary by absentee ballot. Mistakes now happen when the geographical jurisdictions of offices on the primary ballot cut town

lines, as they frequently do in state elections. The rate of error is likely to increase when party rules restrict the franchise to classes of voters within the same voting districts at the same primary and, depending on the number of such clerical errors found to occur, and depending on the margin of victory for the primary candidates, a new primary may be a necessity.

10. The size of the printed official check lists of electors eligible to vote at a party primary will be greatly increased by adding the number of unaffiliated electors, and the additional printing costs will be borne by each town having such primary. In this regard, check lists must be printed as required by statute and also as a practical necessity in order to keep ineligible persons from voting.

11. The number of voting machines will have to be increased proportionately in order to accommodate the proportional increase of eligible unaffiliated electors entitled to vote in a party primary. In this regard, the statutory formula is one voting machine for every twelve hundred party members within a voting district; which will have to be increased to one machine for every twelve hundred party members and unaffiliated voters within the voting district. The cost of programming these additional machines, staffing them with operators, printing ballots and applying the ballots to the face of the machine, and moving and storage, will all be borne by each Connecticut town as an increased taxpayer expense in administering such party primary.

12. As I stated before the General Assembly when asked whether an open primary for restricted offices is "workable", I meant when I said that such a primary is "workable" that it is mechanically possible, but the mechanics of implementation, outlined above, involve risks of voting error, voter confusion and serious administrative problems as well as additional expense.

13. Of course, these problems would be compounded if the Democratic Party adopted a similar party rule which they could claim that they are entitled to do under the court's decision.

14. I would also add that we have no experience in administering an open primary with restricted offices depending on

variable voter qualifications. It is possible that there may be other problems which we can not foresee at this time.

15. The above is accurate and true to the best of my knowledge and belief.

/s/Albert P. Lenge
ALBERT P. LENGE

(Jurat omitted in printing)

Received
Sep 14 1979
Secretary of State

CORRECTED COPY

At a primary of the enrolled members of the Republican Party of the Town of Windsor legally warned and held on Sepember 11th, 1979, the following candidates received the number of votes annexed to their names respectively, for nomination to the offices of Town Council in said Town, to wit:

| NAMES IN FULL | NUMBER OF VOTES IN FIGURES |
|---|---|
| **TOWN COUNCIL** | |
| Dale H. Dierksneide | 631 |
| Robert Geisel | 945 |
| Warren P. Jonnson | 1,000 |
| Barry R. Loucks | 991 |
| Mary Drost | 633 |

Total number of names on Republican Enrollment List in the Town of Windsor, eligible to vote, 3,503

| | | |
|---|---|---|
| Total number of names cnecked as having voted | 1,166 | Republicans |
| | 2 | Democrats |
| | 3 | Unaffiliated |
| | 1,171 | TOTAL |

Duplicate list of votes for nomination to tne Windsor Town Council, Certified by

/s/ Richard C. Bestor
Richard C. Bestor
Signature of Head Moderator

NO. 23 68 15

HENDRIK ELEVELD )SUPERIOR COURT

v. )COUNTY OF HARTFORD

RICHARD C. BESTOR,ET AL.)SEPTEMBER 18, 1979

MEMORANDUM OF DECISION

Pursuant to the provisions of § 9-329a of the General Statutes, the court orders a new primary to be held on Thursday, September 27, 1979, between the hours of 12:00 o'clock noon and 8:00 o'clock, p.m., upon the ground that "but for the improper actions of the election official the result of such primary might have been different." It is further ordered that the same candidates shall appear on the ballot and the same enrollment list as was used at the primary held on September 11, 1979. Had the five ineligible voters been properly

excluded from voting at the primary, the result might have been different and for that reason a new primary is ordered.

The clerk of the court shall forthwith transmit a copy of this order to the secretary of the state.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

| | |
|---|---|
| JULIA H. TASHJIAN, Secretary of the State Appellant, | U.S. SUPREME COURT DOCKET NO. 85-766 |
| v. | |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR., STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE, JR. Appellees. | U.S. COURT OF APPEAL DOCKET NO. 85-7011 |

STATE OF CONNECTICUT) COUNTY OF FAIRFIELD)

We, Edward T. Otremba, and Gloria R. Milano, being duly sworn, depose and say:

I, Edward T. Otremba, am the Republican Registrar of Voters. I have served in this capacity since January, 1970. During my tenure as Registrar I served with the Connecticut Registrars of Voters Association as President for four

(4) years, Vice President for two (2) years prior to that, and also as Legislative Chairman. My duties with the Association encompassed the review of proposed bills on election laws.

Occasionally I gave testimony before the Government Administration and Elections Committee on pertinent bills within their jurisdiction.

I, Gloria R. Milano, am the Democratic Registrar of Voters. I have served in this capacity since June, 1984, prior to that I was Deputy Registrar from January 1983, and prior to that Assistant Registrar from January, 1977.

The two Registrars are responsible for running elections and primaries which includes the hiring of machine mechanics and poll workers.

Services provided to the public by the Registrars include the keeping of the voter records, registration and party enrollment and voting lists.

Bridgeport has a population of 143,100 (1985 State Manual-Page 339). Our records show that there are 41,780 Democrats, 11,348 Republicans and 15,251 Unaffiliates, for a total of 68,379 voters.

We have reviewed the party rule which the Federal Courts have upheld in this case.

In the event that we have a Republican primary for offices covered by the party rule in this case as well as offices not covered by it, such as State Senator and State Representative, and Democratic primaries at the same time as is now the

procedure under state law, then we foresee the following problems:

1. Shortage of voting machines will necessitate the purchase of new machines. We will choose using separate machines rather than programming the same machines to handle both Republican and Unaffiliated voters, because of the complexity in programming and because poll workers would need to be instructed in a completely different way. We have twenty-nine (29) voting precincts and there would have to be at least one machine each for Republican, Unaffiliated and Democratic voters and, in some cases, two and three machines would be needed to accommodate the Democratic voters.

It is our practice to have one spare machine in each precinct even though state law does not require this. In that way if a machine breaks down we can reduce the waiting time for the voter by having a spare machine on site.

A minimum of One Hundred and Six (106) machines would be needed, plus twenty-nine (29) spares, to accomplish a smooth operation under our normal practice. We would then have to buy additional machines. The reason for this is because we normally use more machines in a double primary than we use in a general election. Under the new rule we would need separate machines for each class of voter. It is our estimate that there would not be enough voting machines throughout the state to run the primary under this new rule if these primaries were held in the other towns too.

2. More poll workers will be needed. At least one more checker and one more machine tender would be needed in each precinct to handle the Unaffiliated voters. With twenty-nine (29) precincts this would mean an additional fifty-nine (59) people as one precinct will need two machine tenders. We pay each checker $55 and each machine tender $45 for a primary. (This includes a paid instruction session.) Incompetency of some workers manifests itself and we are hard put to completely resolve this problem. Some of this is due to inexperience and the fact that this is an infrequent job for these poll workers.

The hiring of fifty-nine (59) additional poll workers will create another problem in this kind of primary. Even under the existing system, without this party rule,

there are occasions when we do not have the polling positions filled until the day before the election and sometimes not until the day of election. The hiring of poll workers, to us, would be the most difficult problem to solve in this kind of primary. We have a large Hispanic population so therefore consideration must be given to the hiring of bi-lingual workers with their instructions and associated problems.

3. Space in some of the polling places is rather tight so that setting up a Democrat line, and two Republican lines, with one for Unaffiliated voters would create a more restrictive operation. We have some polling places which are accommodating two precincts. We can envision voters getting into the wrong lines and voting for candidates other than those they are

legally allowed to vote for. This does happen on an ordinary primary day under the existing system. For example on September 10, 1985 we had both Democratic and Republican primaries for Mayor and other city offices and people who were ineligible to vote in a specific primary were erroneously allowed to do so.

4. Inquiries to this office are numerous on primary day and would most definitely increase with an expanded primary. With six (6) people, or more, handling the phones and over-the-counter problems, we find it difficult to manage, at times. This mostly occurs on general election days but occasionally on a primary day. With this party rule, we anticipate that this problem will be compounded to some degree. Because there will be more eligible voters

involved, we expect some Unaffiliated voters asking why they cannot vote for all candidates, especially those running on a local level and in whom they might be more interested.

5. Even if we did not have a Democratic primary at the same time, and even if we are limited to a partial Republican primary (for example: Governor and in one (1) district, State Representative), we feel that problems would still occur that would make the smooth running of the polling place improbable. The types of problems we can foresee at this time would be, Unaffiliated voters trying to vote for offices other than those they are entitled to under the party rule, the possibility of voters getting into the wrong lines and, poll workers not following instructions given under the new rule.

6. To summarize, we feel there would be a most difficult administrative problem in the actual operation of primaries under this party rule. We are almost sure that there will be greater confusion on the part of both poll workers and voters. The likelihood of a greater number of mistakes and improper ballots cast becomes evident, especially if there are full Democratic and Republican primaries.

This affidavit is true and correct to the best of our knowledge, information and belief.

/s/ Edward T. Otremba
Republican Registrar
of Voters

/s/ Gloria R. Milano
Democratic Registrar
of Voters

(Jurat omitted in printing)

ORDER OF COURT OF APPEALS
GRANTING DEFENDANT-APPELLANT'S
MOTION FOR RECALL OF MANDATE AND FOR
STAY OF ENFORCEMENT OF JUDGMENT PENDING
U.S. SUPREME COURT FINAL DISPOSITION

- - - - - - - - - - - - - - - - - - - -

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPUBLICAN PARTY OF :Docket No. 85-7011
STATE OF CONNECTICUT

vs.

TASHJIAN

* * * *

United States Court of Appeals
Filed
Apr. 17, 1986
Elaine B. Goldsmith, Clerk
Second Circuit

**ORDER**

**IT IS HEREBY ORDERED that the motion be and it hereby is granted**

and the mandate is recalled pursuant to the terms of Fed. R..App. P. 41(b), which provides that the stay shall continue until final disposition by the Supreme Court.

/s/ Irving R. Kaufman

JLO/per IRK

4/17/86
/s/ Richard J. Cardamone

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

ELAINE B. GOLDSMITH
Clerk

July 23, 1986

Supreme Court
of the United States
1 First Street, NE
Washington, D.C. 20543

Attention: S dy Nelson

Re: REP ICAN PTY ST. V. TASHJIAN
COA 85-7011, SC# 85-766

Dear Ms. Nelson:

Enclosed is the remainder of the court of appeals file, which consist of all moving papers in the motion to recall the mandate and for a stay of enforcement of judgment pending the U.S. Supreme Court review, and the order granting said motion

which is endorsed on the main motion.

Please incorporate these papers with the rest of the file that was previously transmitted.

Elaine B. Goldsmith,
Clerk

By: Lynn Little
Deputy Clerk

Encl.
cc: Daniel R. Schaefer
Assistant Attorney General

AFFIDAVITS SUBMITTED BY DEFENDANT-APPELLANT

TO U.S. COURT OF APPEALS

FOR THE SECOND CIRCUIT

IN OPPOSITION TO PLAINTIFFS-APPELLEES'

MOTION TO VACATE STAY

**UNITED STATES COURT OF APPEALS**

**FOR THE SECOND CIRCUIT**

| | |
|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | U.S. SUPREME COURT DOCKET NO. 85-766 |
| v. | |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR. STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE, JR. Appellees | U.S. COURT OF APPEALS DOCKET NO. 85-7011 |

STATE OF CONNECTICUT:
ss. August 8, 1986
COUNTY OF HARTFORD :

**AFFIDAVIT OF ALBERT P. LENGE, ELECTIONS ATTORNEY AND DIRECTOR OF ELECTIONS FOR THE STATE OF CONNECTICUT**

Affidavit

I, Albert P. Lenge, being duly sworn, hereby depose and say as follows:

1. I am presently the Elections Attorney and Director of Elections for the State of Connecticut. I have served in this capacity since December, 1981. As chief legal counsel to the Secretary of the State, who is Commissioner of Elections, my duties include advising municipal election and primary officials on the proper discharge of their election and primary responsibilities and for providing legal advice on election law, upon request.

2. On April 4, 1986, I filed an affidavit in connection with a motion for stay detailing the practical difficulties with conducting a primary on September 9, 1986, under the rule adopted by the plaintiff political party. A copy of this affidavit is attached hereto and made a part hereof.

3. In my prior affidavit I indicated that there were three options at that time for towns in the instance where there were certain "dual electorate" Republican primaries in which unaffiliated voters could vote for certain offices but not for others on the same ballot -- use of "programmed voting machines" and the "exterior latch," use of separate machines, or use of paper ballots. Each was shown to have administrative difficulties.

4. Should this Court order the stay lifted now, in my opinion it is too late (with the primary in less than five weeks' time) to choose any course except the establishment of separate voting machines. This best available alternative would still, in my judgment, create an unacceptably high risk of mistakes by

primary officials together with voter confusion, a serious administrative burden on the State and the towns, disruptive potential for the upcoming September 9, 1986 primaries, and the possibility of voting machine shortages, hence extra expense as set forth in my prior affidavit, paragraph 7.

As I stated in my previous Affidavit, one of the major reasons why the Republican Party Rule would cause serious administrative problems for the state and its towns in carrying out primary elections is that, under the Rule, voter qualifications would differ from office to office. Unaffiliated voters could vote for governor, U.S. Congress, and certain additional offices, but not for general assembly, probate judge or other offices.

5. As of August 7, 1986, based on filings with, or information given to, our office, Republican primaries are scheduled for at least the following offices: Governor; Lieutenant Governor; State Senator, Districts 25 and 26; State Representative, Districts 141 and 142; Judge of Probate, Districts of Newington, Westport, and Woodbridge. Under the rule, unaffiliated voters may vote for Governor and for Lieutenant Governor, but not for the other offices. The primaries scheduled thus far for such other offices involve 12 towns and a portion of a 13th, with a total (as of October 15, 1985) of 62,787 Republicans (who may vote for all offices being primaried), 48,572 unaffiliated voters (who may vote for Governor and Lieutenant Governor only), and 55 voting

districts. The number of such "dual electorate" towns and voters is likely to increase as we are notified of additional Republican primaries. Such notifications may be received as late as the latter part of August in the case of single-town-office primaries (e.g., State Representative in the 82 single-town assembly districts).

6. As of August 7, 1986 based on filings with, or information given to, this office, Democratic primaries are scheduled for at least the following offices: Treasurer; Congress in Districts 5 and 6; Sheriff in Fairfield, Hartford, and Tolland Counties; State Senator, District 19; State Representative, Districts 32, 47, 48, 66, 76 and 105; Judge of Probate, Districts of Thompson and Winchester; Registrar of Voters, Town of Middlebury. The number of

Democratic primaries for non-statewide offices is also likely to increase as additional notifications are received. The Treasurer primary would affect all 169 towns. The other Democratic primaries scheduled thus far affect 118 towns and a portion of one other. Such 118 towns include 12 of the 13 "dual electorate" Republican primary towns indicated in 5 above. Hence in those 12 towns there will be three classes of voters, each with a different voting eligibility: 60,982 Republicans, 46,227 unaffiliated voters, and 51,259 Democrats (October 1985 figures). These "triple electorate" numbers may increase as additional primary notifications are received.

7. In addition to the problems with absentee ballots detailed in paragraph 9 of

my prior affidavit, I would indicate that since there is a statewide Republican primary for governor and lieutenant governor and under the party rule unaffiliated voters will be entitled to participate, there is a possibility that there will be a shortage of absentee ballot materials ordered on or about September, 1985 for distribution to the towns this year. All of these materials have been distributed to the 169 Connecticut municipalities as of this time.

Based on a partial survey conducted by our office and information on file with us, it is also a virtual certainty that there will not be enough voting machines for some of the 13 or more towns where there will be different Republican primaries with different voting

qualifications under the Party rule. This is because separate voting machines with only partial ballots will be needed for unaffiliated voters. Shortages or increased existing shortages may also occur in other towns due to the Party "rule." Whether there will be enough machines can not be known by this office. In all other towns a greater number of the town's machines than used under current law will be needed to accomodate unaffiliated voters, which will significantly increase the cost of administering this primary election in every Connecticut town.

8. Further, the Towns will have to expend extra funds to print additional ballots and checklists as set forth in paragraph 10 of my prior affidavit.

9. There is a need for the training of registrars and moderators in the conduct of the primary under the party rule. This office would want to hold at least four registrars' conferences and ten moderators' conferences to indicate the proper procedures in the conduct of the primary, including such matters as ineligible voters, newly-disaffiliated Democrats, and the completion of moderator's returns. There is insufficient time, because of other duties directly related to the September 9, 1986, primary, to schedule and hold these conferences at this time.

10. The lifting of the stay less than five weeks before the primary, when the legislature is no longer in session, does not allow time for the needed statutory modifications to the election laws,

although legislative changes would be insufficient to deal with all of the practical problems posed by the Party "rule."

11. The plaintiffs have known or should have known for a long time, that there were at least four candidates seeking the nomination of the party for the office of Governor and that a primary was thus a reasonable possibility if any challenger obtained at least 20% of the convention vote. In this regard, campaign disclosure forms were filed in the Secretary of the State's office by individuals affiliated with the Republican Party and seeking the office of Governor, on the following dates:

September 10, 1985; September 23, 1985, November 12, 1985 and January 7, 1986. There was also a Republican delegate

primary for Governor in Stamford, held on May 20, 1986, in which there were three competing slates of candidates for delagates. In addition, a Republican caucus for Governor was held in Fairfield on April 1, 1986.

12. After the stay had been granted by the Second Circuit, on April 17, 1986 this office ordered 10,000 copies of our procedure manual for counting absentee ballots as stated in my previous affidavit and 5,000 copies of our moderator's handbook for elections and primaries, which it is now distributing to every Connecticut town in sufficient quantities. These volumes will have to be corrected and reissued at an expense to the State, if the stay is lifted now. The agency does not have the resources to adequately make this

revision in the remaining time period and to distribute revised booklets, which take several weeks to print and many days to assemble, package, address and distribute by mail.

13. If the stay that was granted by the Second Circuit were now removed, I believe that there is insufficient time to make the necessary adjustments to the many involved procedures for administering primary elections--procedures designed to reduce error and produce an accurate outcome--and this insufficiency would create an unacceptably high risk of error by primary officials which, depending on the closeness of the vote and the incidence of error, may place the outcome in dispute.

14. Contrary to paragraphs 3 and 4 of the affidavit of Dorothy Turnrose, the

set-up of the voting machines involves more than stripping the old ballot from the machine, clearing the machine's vote totals and putting the new ballot for the primary in place. For example, programming the primary lever alluded to in paragraph 8 of Ms. Turnrose's affidavit, resulted in the jamming of the Secretary of the State's lever voting machine for over an hour by two of the voting machine mechanics used by the Secretary of the State to train and certify voting machine mechanics throughout the state. An entire morning was unsuccessfully spent by myself, two attorneys and the foregoing mechanics attempting to learn how to program such primary lever under the system proposed by Ms. Turnrose. Thus, activation of this primary lever will, contrary to Ms.

Turnrose's statement, most certainly delay the set-up process of the voting machines.

15. Contrary to Ms. Turnrose's statements in paragraphs 5 and 6 of her affidavit, it is highly likely, as previously stated, that some towns will be short the statutorily required number of voting machines needed to be used in the event of an "open primary", that is, a party primary with eligibility extended to unaffiliated electors.

16. Contrary to paragraph 10 of Ms. Turnrose's affidavit, there are serious difficulties associated with an open primary and the lack of adequate planning time. For example:

a) absentee ballot application forms, already distributed to the town clerks in the thousands, have no place to

indicate thereon that the clerk mailed a partial ballot to a voter;

b) instructions for configurating and printing ballots, already sent to the clerks, do not include partial ballots and provisions for either color coding the same or printing additional information thereon --necessary to distinguish between Republicans and Unaffiliateds under the Party "rule" and to reduce clerical error;

c) There is a high probability of insufficient voting machines in some towns, as stated earlier, necessitating lease arrangements or the printing of emergency absentee ballots;

d) There are inadequate provisions for substituting a full ballot for a partial ballot in the event that an

unaffiliated elector becomes an enrolled Republican by 12:00 noon the day before the primary--an enrollment privilege that is currently the right of all such persons under Connecticut statute;

e) There are inadequate provisions for identifying electors entitled to vote only a partial ballot inside a polling place on primary day.

f) Most importantly, there is inadequate time to train election officials and workers on how to follow the Party "rule" instead of State law.

17. Contrary to paragraph 7 of the affidavit of Heather Danaher, there will be a substantial number of unaffiliated voters added to the existing Republican voter base should the stay previously granted by the Second Circuit be dissolved. For example,

in the 13 towns now known to be having Republican primaries in which, under the current Republican Party rule, unaffiliated electors will not be permitted to vote for all offices being primaried, approximately 48,572 unaffiliated electors will be added to the Republican voter base for the offices of Governor/Lieutenant Governor only--a 77.4% increase. Statewide, this will add approximately 581,268 unaffiliated electors -- or a 125.9% increase over current Republican enrollment figures, based on the most recent data filed with this office.

What this means is that even those towns which will not have conflicting voter qualifications under the Party "rule" will still have to have many more machines, more trained poll workers, more voting lists and more absentee ballot materials.

18. In summary, to vacate the stay at this time would in my opinion have a disruptive potential for next month's primary and a serious administrative burden on the State and towns and also greatly increase the possibility of voter confusion and voting mistakes. Depending upon the incidence of error and the closeness of vote margins, it could put the outcome of some of the primaries in doubt.

19. This affidavit is true and correct to the best of my knowledge, information and belief.

/s/ Albert P. Lenge
Albert P. Lenge

(Jurat omitted in printing)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

| | |
|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | U.S. SUPREME COURT DOCKET NO. 85-766 |
| v. | |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR. STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE,JR. Appellees | U.S. COURT OF APPEALS DOCKET NO. 85-7011 |

STATE OF CONNECTICUT:
ss. August 21, 1986
COUNTY OF HARTFORD :

**SUPPLEMENTAL AFFIDAVIT OF ALBERT P. LENGE, ELECTIONS ATTORNEY AND DIRECTOR OF ELECTIONS FOR THE STATE OF CONNECTICUT**

Affidavit

I, Albert P. Lenge, being duly sworn, hereby depose and say as follows:

1. I wish to update my Affidavit of August 8, 1986 detailing the practical difficulties with conducting a primary on September 9, 1986, under the rule adopted by the plaintiff political party.

2. The challenging candidates in Democratic primaries for State Treasurer, and Sheriffs for Fairfield, Hartford and Tolland Counties have withdrawn. We received the Fairfield County withdrawal yesterday, August 20, 1986. However, as of this date there are still Democratic primaries scheduled in 90 of the 169 towns in Connecticut on September 9, 1986. This will still require a substantial number of voting machines, although not as many as indicated in the original affidavits.

3. The number of Republican towns with primaries involving conflicting voter

qualifications under the Party "rule" has now been increased from 13 to 15, with the addition of Hamden (Registrar of Voters primary) and East Lyme (Judge of Probate primary). By conflicting voter qualifications, I mean that in all these towns there will be Republicans who will be able to vote for all offices, while under the party "rule" unaffiliateds could vote for only some of them, i.e., Governor and Lieutenant Governor. The election officials would actually have to administer two sets of Republican primaries with different voter qualifications, with the difficulties that I described in my original Affidavit. This will occur throughout <u>all</u> of 14 of these towns, and in part of the remaining one (Stamford).

4. The number of voters (based on the statistics most recently filed with this office) that will be subject to these conflicting voter qualifications under the "rule," if that rule is now to be enforced, has increased from 62,787 to 72,319 Republicans and from 48,572 to 66,759 unaffiliated voters because of the primaries in East Lyme and Hamden. The number of voting districts has been increased from 55 to 68.

5. In four of these towns (Redding, Ridgefield, Weston and Wilton) and part of a fifth (Norwalk), there will also be Democratic primaries, thus creating possible shortages of voting machines in these areas.

6. In addition, today, August 21, 1986, absentee ballots must be available

for distribution by town clerks to applicants by virtue of Conn. Gen. Stat. § 9-133b. In the fifteen towns where there will be conflicting voter qualifications under the "rule," the ballots for Republican voters cannot be used for unaffiliateds, because those ballots have non-statewide offices for which unaffiliateds cannot vote under that rule. This means that new ballots would now have to be printed and issued. Not only would this result in increased expense for the towns as well as time and effort, but it also means that unaffiliated absentee voters would not get their ballots in time under the State law, if they got them at all, given the time required for printing and distribution. Many more absentee ballots would also be needed in other towns

as well because of the influx of unaffiliateds at this late stage.

7. In summary, while there will be more voting machines available than originally indicated, the number of towns that would have to deal with conflicting voter qualifications has actually increased. This is greatly compounded by the absentee ballot problem discussed above.

Most important, there is even less time for all towns in Connecticut to recruit and train the necessary primary election workers. This problem will be aggravated in the 15 towns with conflicting voter qualifications, but it will also exist in all other towns because of the need to accommodate the 125.9% increase in the potential statewide Republican primary

electorate due to the admission of unaffiliated voters.

There is less than three weeks remaining until the September 9, 1986 primary. To require the State and its towns to follow the party "rule" instead of state law at this time would in my opinion create a serious and major administrative burden, together with a greatly increased risk of voter confusion and election mistakes.

/s/ Albert P. Lenge
Albert P. Lenge

(Jurat omitted in printing)

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

| | |
|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | :U.S. SUPREME COURT<br>:DOCKET NO. 85-766 |
| v. | : |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR. STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE, JR. Appellees. | :U.S. COURT OF APPEALS<br>:DOCKET NO. 85-7011 |

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STATE OF CONNECTICUT:
COUNTY OF HARTFORD : AUGUST 7, 1986

**AFFIDAVIT OF JOSEPH L. GRACEY, JR.**

I, Joseph L. Gracey Jr., being duly sworn hereby depose and say:

1. I have been a voting machine mechanic for the Town of Waterford, Connecticut, from 1972 through 1984.

Additionally, for the past three years I have been a voting machine mechanics instructor for the Secretary of the State. Most recently I instructed voting machine examiners for certification purposes for the Secretary of the State's Office. Over the years I have attended various Automatic Voting Machine Company training courses given by the voting machine manufacturer.

2. In addition, much of my adult life has been spent in dealing with on-job-training, as a vocational instructor in the U.S. Navy and as a training/program manager for apprenticeship in the Connecticut Department of Labor.

3. I have read the Affidavits of Dorothy R. Turnrose and Heather L. Danaher which were shown to me by the Attorney General's Office.

4. The use of the primary lever and/or the Restricted Office Lever to restrict on a voter by voter basis the offices for which a voter may vote is certainly possible, since the automatic voting machine has these capabilities.

5. However, I have never had to set-up either of these mechanisms in my work as a voting machine mechanic, nor do I know of any voting machine mechanics in Connecticut who have done so.

6. Therefore, in my opinion, I would require instruction by an expert on how to set-up and test these two mechanisms.

7. As a voting machine instructor (under contract with the Office of the Secretary of the State) who instructs and tests voting machine mechanics I believe

that the voting machine mechanics would require thorough instruction on how to set-up and test these two mechanisms.

8. Additionally, election officials and workers (including the machine tenders) will require thorough instruction on procedures for voter use of these features.

These people will also need this training because having the same machine service more than one class of voters, some of whom would be voting for different offices, would require the machine tender to align the machine properly every time the voter enters the booth. The alignment would have to depend on whether the voter was Republican or Unaffiliated, and the voter must somehow be identified as such to the machine tender.

In my experience, even the present system requires constant supervision by election officials for the machine tenders to perform their jobs correctly. The process Ms. Turnrose described would now require additional duties, i.e., positioning the primary or restrictive office lever the right way every time the voter came to vote.

9. In my opinion, there is not time between now and the date of the primary to accomplish the necessary instructions for myself and the voting machine mechanics, election officials and workers to carry out what Ms. Turnrose calls the "Republican Party's open primary rule" as stated in her Affidavit (Paragraph 4, p.2) and that of Heather Danaher in the twelve (12) cities and towns referred to in those Affidavits.

10. In addition, if the Restricted Office Lever is to be utilized in a primary, each affected municipality must purchase an adequate supply of a part called a "yoke" in order to set-up this mechanism. In my experience, no municipalities presently have any of these yokes.

11. In her Affidavit Ms. Turnrose states: "Such set-up by the mechanic involves stripping the old ballot from the machine, clearing the machine's vote totals and putting the new ballot for the primary in place on the machine." Page 2, Paragraph 3.

Setting-up the machine involves more than this. The machine must be mechanically prepared to accept the new

ballot. The mechanic must cover the questions, write-in slides, party levers, and the unused candidate pointers. The mechanic must install all grouping pins to allow the voter to vote office by office instead of by grouped office, such as Board of Finance. The mechanic must also make sure that the machine is in sound operable condition.

12. After this is done the mechanic must test vote the machine. Then election officials and necessary party representatives also test vote the machine prior to installation of seals. After zeroing the machine, to clear it of the test votes, the mechanic seals the machine and turns the keys over to the election officials.

13. All the steps which I have described in the above paragraph would have to be done anyway even without the "open primary rule," referred to by Ms. Turnrose (Paragraph 4, p.2). Ms. Turnrose later states: "Depending upon the extent to which the machine's old ballot must be stripped, set-up of any additional machine needed to implement the open primary for the 1986 governor-lieutenant governor primary can be accomplished within thirty to forty-five minutes per machine". (Paragraph 4, pp.2-3). There may be mechanics who would take only this amount of time. However, I allow myself an average of one hour per machine. Additional time would be required to set-up and test the primary lever and/ or restricted office lever mechanisms in those

municipalities where unaffiliated voters could vote in the Republican primary for Governor and Lieutenant Governor, but not in the other Republican primaries, such as for State Representative.

14. Ms. Turnrose in her affidavit states: "I believe that there are no administrative difficulties which would reasonably prevent implementation of an open primary for governor-lieutenant governor in combination with the six local primaries." (Paragraph 10, p.5).

I do not believe that this is correct. I believe that there will be administrative difficulties because of the need to coordinate, schedule and deliver instruction to voting machine mechanics, election officials and workers in the time remaining for the September 9th primary.

15. The above is accurate and true to the best of my knowledge, information and belief.

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Joseph L. Gracey, Jr.

(Jurat omitted in printing)

**UNITED STATES SUPREME COURT**

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|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | :U.S. SUPREME COURT<br>:DOCKET NO. 85-766 |
| v. | : |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR. STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE,JR. Appellees. | :U.S. COURT OF APPEALS<br>:DOCKET NO. 85-7011 |

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**AFFIDAVIT OF ANN D. ARTEL**
**REPUBLICAN REGISTRAR OF VOTERS**
**FOR THE CITY OF NORWALK, CONNECTICUT**

I, ANN D. ARTELL, being duly sworn, hereby depose and say:

1. I am the Republican Registrar of Voters for Norwalk, Connecticut. I have served in this position since 1977. Before that, I was a volunteer worker in the Norwalk Registrar's Office for about four

years. I have also served as Vice Chairman of the Republican Town Committee in Norwalk for eight years. I am now Republican District Chairman of District A.

2. If we are required to follow the Republican Party Rule which allows unaffiliated voters to vote in some, but not all, Republican primaries, then we will have serious difficulties in administering the Primary scheduled for September 9, 1986.

3. In that primary election, there will be Republican primaries for Governor and Lieutenant Governor, in which unaffiliated voters must be allowed to vote under the Party Rule. However, there will also be a Republican primary for the 25th State Senatorial District in which unaffiliated voters could not vote under

that rule. In addition, there will also be a Democratic Primary for High Sheriff of Fairfield County in which our city is located. I have been informed by the Secretary of State's Office that a Democratic primary for State Treasurer may also be held. Unaffiliated voters could not vote in those Democratic primaries.

4. More voters are unaffiliated in Norwalk than belong to any other party. Our breakdown, as of July 1, 1986, is as follows:

| | |
|---|---|
| Republican | 10,465 |
| Unaffiliated | 15,428 |
| Democrat | 14,442 |
| Conservative | 117 |
| Independent Party | 812 |
| Total | 41,264 |

We also have 12 voting districts.

5. If the Court requires us to enforce the Party Rule at this late date, then in my opinion, the only realistic way

this could be done if it could be done at all, would be by having separate machines for unaffiliated voters. The other alternatives are either setting up the machines with different ballots for both Republican and unaffiliated voters on the same machine or instead have paper ballots. These last two are just not workable from a practical standpoint. There will be too much possibility of mistakes and breakdown.

6. However, using separate machines would also be very difficult. First, we would not have enough machines. 21 machines would be required for the Democratic Primary and 46 voting machines would be needed for the Republicans and unaffiliated voters. This would total 67 voting machines. We only have 58 machines

and would, therefore, be 9 machines short. Each machine costs approximately $3,000.00. We also have to remember that other towns will be holding Republican and Democratic primaries and some towns might have to deal with the dual voter qualifications. For the Republican Primary, therefore, I do not believe it would be easy, to say the least, for us to borrow additional machines from other towns.

7. There is also a very real problem in having enough <u>properly trained</u> poll workers. I estimate that we would need 19 additional voting machines to serve the unaffiliated voters. This would require 19 more machine tenders. In addition, 12 more checkers would be needed to man special tables for the unaffiliated voters. In my opinion, 6 more moderators would also be needed.

This also would involve an additional expense of over $2,100. This does not include extra compensation that would be needed for the training session.

We are on a very tight budget in our office and our city has just had a 10% tax increase. Therefore, our city would have to face an additional financial burden which would not be well received.

8. The most serious problem, however, would be getting these workers properly trained. Just today, I am sending out letters to the prospective new moderators that we have managed to retain for the September 9, 1986 primary, notifying them of a training session in New Haven on August 14, 1986. If we now have to hire 19 more machine tenders, 6 more moderators, and 12 more checkers, or a total of 37

additional workers, there will hardly be time for them to get the training that is absolutely necessary.

9. In stating that 37 more workers would be needed, I also did not make allowance for additional workers who would have to make sure that the unaffiliated and Republican voters stay in different voting lines for the different machines. I cannot say for sure exactly how many would be needed but I would estimate at least 12, based on one person per voting district.

10. Another additional burden that would fall on our office would be preparing 12 extra voter registration books containing separate lists for the unaffiliated voters.

11. While we serve voters of all parties as well as unaffiliated voters in a

general election, the primary would present very real difficulties under the Party Rule that would not be present at a general election. This involves, as stated earlier, separate voting machines with separate ballots, separate checking tables and separate voting lines for the unaffiliated voters.

12. To sum up, if the Court allows unaffiliated voters to vote in the Republican Primary and requires us to enforce the Republican Party Rule, serious administrative problems would be created. These would include which lines the voters go to, errors in checking off the right names and voters going into the lines without being checked off properly.

If we use the same machines, it would also be confusing and unfair.

If we use separate machines, we would not have enough equipment. In addition, it is very difficult to find enough poll workers. Some would be away on vacation, especially during the important training period, and others would be taking their children back to school. It is difficult enough as it is to get the necessary people because the pay is not that high.

If we were notified back in March that the Party Rule would have to be obeyed by the towns, then we could have at least prepared for it in time. For this Rule now to be enforced would be a shock to our budget process and would also create very difficult problems in administering the Primary Election the right way.

13. The above is accurate and true to the best of my knowledge, information and belief.

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Ann D. Artel

(Jurat Omitted in Printing)

**UNITED STATES SUPREME COURT**

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|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | U.S. SUPREME COURT DOCKET NO. 85-766 |
| v. | U.S. COURT OF APPEALS |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR. STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE,JR. Appellees | DOCKET NO. 85-7011 |

STATE OF CONNECTICUT )

COUNTY OF FAIRFIELD )

I, Carolyn, D. Miller, being duly sworn, depose and say:

1. I am the Republican Registrar of Voters for Darien, Connecticut. I have served in this position for eight years.

Prior to that, I was Deputy Republican Registrar. I also worked in many elections prior to becoming Deputy.

2. The possibility of three primaries on September 9th, presents every Registrar in every Connecticut town with enormous administrative problems, some common to all towns and some unique to individual towns.

3. In my town, there will be a Republican Primary for Governor in which unaffiliated voters could vote under Party rule. We will also have a Republican Primary for State Representative for the 141st District as well as for the Board of Education in which unaffiliated voters could not vote under Party rule. In addition, three voting districts will have

a Republican Primary for the 25th State Senatorial District. There will also be a Democratic Primary for High Sheriff in my county (Fairfield). An additional Democratic Primary for Treasurer has been qualified for, according to the Secretary of the State.

4. For Darien, the most immediate and serious problem is the lack of voting machines. The Town has exactly the number of machines required to conduct a two party primary. Should the court allow unaffiliated voters to participate in the Republican Primary, six additional machines would be needed to comply with current statutes. With every town in Connecticut conducting both Democratic and Republican primaries on September 9th, renting or borrowing voting machines from other towns

would not be possible. Therefore, Darien would not meet the requirements of section 9-238.

5. Should the court rule in favor of an open primary, I would suggest that this same court either require the State to conduct the primaries at least fifteen (15) days apart or, require the State to allow the use of the party primary device within each machine. While both solutions are possible, current statutes do not allow for their implementation.

6. It has been my experience, over the last thirteen years in office, that the hurried enactment of changes in the election process leads not only to widespread voter confusion but also to poorly conducted elections.

This affidavit is true and correct to the best of my knowledge, information, and belief.

/s/ Carolyn D. Miller
Republican Registrar of Voters

(Jurat omitted in printing)

**UNITED STATES SUPREME COURT**

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|---|---|
| JULIA H. TASHJIAN, Secretary of the State of Connecticut Appellant, | :U.S. SUPREME COURT<br>:DOCKET NO. 85-766 |
| v. | : |
| REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR. STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE,JR: Appellees. | :U.S. COURT OF APPEALS<br>:DOCKET NO. 85-7011 |

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**AFFIDAVIT OF JAMES W. LaVERSA,**
**REPUBLICAN REGISTRAR OF VOTERS**
**FOR THE TOWN OF GREENWICH, CONNECTICUT.**

I, JAMES W. LaVERSA, being duly sworn, hereby depose and say:

1. I am the Republican Registrar of Voters for the Town of Greenwich, Connecticut. I am completing my fourth year in this position. I have also been a member of the Republican Town Committee for

Greenwich since 1974, and have served as a District Leader. I have worked in various elections as a party worker. I serve as Registrar of Voters on a part-time basis. My other profession is that of physical therapist.

2. I have heard that there may be an effort to remove the stay that has been granted in this case, and to require that the Republican Party Rule, permitting unaffiliated voters to vote in certain Republican primaries, be enforced by the State and the towns for the primary scheduled for September 9, 1986.

3. If the Party Rule is required to be enforced, then I believe this would cause difficult problems for our town primary elections. There are a total of 37,286 registered voters in Greenwich. Of

these, there are 17,860 Republicans, 12,137 Unaffiliates and 7,289 Democrats. Thus, 80% of the electorate, namely Republicans together with Unaffiliates, would be eligible to vote in the Republican Primary under the Party Rule. This would, in my opinion, double the cost of the Primary. The largest single cost would be the need to hire additional machine tenders, checkers and challengers and aisle conductors. The aisle conductors would be needed because there could very well be a Democratic Primary at the same time. Many more voting machines would be necessary. Although these would probably be available in my town, this would also involve greater effort and expense. Without the Party Rule, 30 to 32 machines would have to be programmed and set up. This number would

be increased to 58, or almost double, under the Party Rule.

4. In addition, more moderators and counters would be needed to tabulate the absentee ballots. An additional source of expense would be not only printing more ballots but also printing the unaffilliated voter lists.

5. In addition to the greatly increased expense, there would also be other administrative problems as well. During the General Elections, the polls are open for 14 hours, from 6 a.m. to 8 p.m. Under existing State law, however, the hours for voting are reduced to 8 hours for a Primary from 12 noon to 8 p.m. Thus, many more persons--in the case of Republican Primary comprising 80% of the electorate-- would have to vote in a reduced period of time.

6. I also anticipate more voter confusion under the Republican Party rule. In some of the states where unaffiliated voters can vote in a primary, those voters can also vote in either the Republican or Democratic Primary. It is certainly foreseeable that some of the unaffiliated voters voting in our town might also be under the same impression, and we will have to make sure that they vote only in the Republican Primary.

7. There are only approximately six weeks before the September 9, 1986 Primary. Thus, the increased burdens on our office such as programming almost twice as many machines, hiring twice as many personnel and providing the special training, all would have to be done under difficult time constraints.

8. I believe that it is an unfair and unreasonable imposition on our town and our office to have to enforce a Party Rule when the U.S. Supreme Court has not yet decided this case. If we have to obey the Party rule for the upcoming primary, and the Supreme Court then decides that the State law, not the Party Rule, should be followed, we will have to go through a completely new set of procedures for this September Primary only to have them changed again afterwards.

9. I also should note that I am giving this Affidavit on the basis that there will be no other Republican Primaries in our town. Thus the same machines and ballots could be used for Republican and Unaffiliated Voters, since the voting qualifications would be the same. In other

towns, however, there will be Republican Primaries in which Unaffiliated Voters could not vote (such as for General Assembly or Probate Judge), together with Republican Primaries in which those voters could vote. I would expect that the administrative problems would be greatly increased, especially in view of the relatively short time there is for those towns to prepare for that situation.

10. The above is accurate and true to the best of my knowledge and belief.

James W. LaVersa

(Jurat Omitted in Printing)

ORDER OF COURT OF APPEALS
DENYING PLAINTIFF-APPELLEES'
MOTION TO VACATE STAY

**UNITED STATES COURT OF APPEALS**
**THE SECOND CIRCUIT**

Republican Party of the State of Connecticut,et al : 85-7011

v.

Julia Tashjian

IT IS HEREBY ORDERED that the motion be and it hereby is denied

UNITED STATES COURT OF APPEALS
FILED
AUGUST 21, 1986
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

/s/
Irving R. Kaufman

/s/
James L. Oakes